IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15218 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINUBHAI BHIKHABHAI PATEL

Versus

DIST COLLECTOR

Appearance:

1. Special Civil Application No. 15218 of 2003

MR RD RAVAL for Petitioner No. 1-10

MR NAGESH SOOD, AGP for Respondent No. 1,4

MR MUKESH H RATHOD for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 27/08/2004

ORAL JUDGEMENT

Rule. Shri M.H.Rathod, Learned Advocate waives service of rule on behalf of the respondent no.2 and 3.

Shri Nagesh Sood, Ld. AGP waives service of rule on behalf of the respondent no.1 and 4. With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Collector, Anand dated 29.9.2003 in setting aside Entry No. 210 exercising the powers under Section 258 of the Gujarat Municipalities Act.

3. Shri R.D.Raval, Learned Advocate appearing for the petitioners has submitted that the petitioners were beneficiaries of Resolution No.210 passed by the Nagarpalika by which certain rights were created in favor of the petitioners and inspite of that, the Collector, Anand has set aside Resolution No.210 dated 7.12.1998 without giving any opportunity to the petitioners. Under the circumstances, he has submitted that the impugned order passed by the Collector, Anand is against the principles of natural justice. Shri Raval has relied upon the judgment of this Court in the case of H.H.Parmar Vs. Collector, Rajkot reported in 1979 (2) GLR Page 97, in support of his proposition that before cancelling the resolution, the beneficiaries of that resolution are required to be given an opportunity of being heard.

4. Shri M.H.Rathod, Learned Advocate appearing on behalf of the Nagarpalika has submitted that in fact, a show cause notice was served upon the petitioners on 27.5.2003 by the Nagarpalika and therefore, there is no question of hearing the petitioners by the Collector. Shri Sud, Ld. AGP has submitted that in fact, in view of the fact that the resolution passed by the Nagarpalika was illegal and contrary to the provisions of the Gujarat Municipalities Act, it has rightly been set aside.

5. Heard the Learned Advocates appearing on behalf of the parties.

6. By resolution no.210 dated 7.12.1998, the petitioners were allotted/leased some land for the shops for the purpose of carrying on their business and that resolution came to be set aside by the Collector, Anand exercising the powers under Section 258 of the Gujarat Municipalities Act. By Resolution No.210 dated 7.12.1998, certain rights are given in favor of the petitioners. For cancelling the said resolution, the persons who were the beneficiaries of Resolution No.210 were required to be given an opportunity of being heard

and show cause notice was required to be given. In the present case, from the record and the order, it seems that so far as the petitioners are concerned, no opportunity has been given. In that view of the matter and in view of the judgment of this Court in the case of H.H.Parmar (Supra), the order passed by the Collector, Anand dated 29.9.2003 in cancelling Resolution No.210 only qua the petitioners is hereby quashed and set aside on the ground that before cancelling the resolution No.210, the petitioners were not given an opportunity of being heard. It is agreed between the parties, more particularly, on behalf of the petitioners that the petitioners will appear before the Collector for the purpose of hearing on 15.9.2004. It is also agreed by the petitioners that no date will be intimated to the petitioners with regard to hearing on 15.9.2004. The Collector, Anand is directed to take an appropriate decision after giving an opportunity to the petitioners within a period of six (6) weeks thereafter. It is made clear that this Court has not considered the merits of the case and the impugned order is set aside only on the ground that the same was against the principles of natural justice. Rule is made absolute with no order as to costs.

(M.R.Shah, J)
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